IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 24 */ 2005* Single Bench

Appellant (Plaintiff) :

Prakashchand Jain
S/o Shri Heera Lal Jain,
Aged about 48 years,
R/o Village Dondi
Tahsil Balod,
Dist : Durg-(C.G)

Versus

Respondents (Defendant) :

1. State of Chhattisgarh
Through Collector Durg
Dist : Durg-(C.G.)

2. Shri Sunderlal
S/o Dhanaji Kalar,
Aged about 45 years,
R/o Dondi Lohara,
Dist : Durg-(C.G.)

R.R. No. 107/05 Presented by Shri C.R. Sahu dated 11.1.05

SECOND APPEAL U/S 100 OF THE CIVIL PROCEDURE CODE

(19)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 24/2005

Appellant — Prakash Chand Jain

Vs.

Respondents — State of C.G.& another

J U D G M E N T

(Passed on 15-04-2005)

Dhirendra Mishra,J.

This appeal has been preferred by the appellant against the impugned judgment and decree dated 11/10/2004 passed by Addl. District Judge, Balod in Civil Appeal No. 43-A/99 by which judgment and decree dated 31/08/99 passed by Civil Judge Class I, Balod in Civil Suit No. 7-A/94 has been confirmed.

The brief facts of the case necessary for disposal of this appeal are as under:

2. That, a suit for declaration and perpetual injunction was filed against the respondents on the averment that Government land bearing Khasra Nos. 1059 and 1077 (which was later changed as 1328) area being 1.00 acre situated in Dondilohara was given on permanent lease for construction of cinema hall by Collector, Durg vide order dated 24/09/86 on premium of Rs. 6000/- and on annual rent of Rs. 450/-. After obtaining the suit land on lease the plaintiff started constructing the cinema hall. The defendant No.2 applied for lease of 3 decimal of the suit land. The application of the defendant No.2 was registered as a revenue case by the Tahsildar, Dondilohara and the case for allotment of the above mentioned land in favour of defendant No.2 was illegally forwarded by the Tahsildar to the Collector through the SDO, Dondilohara. The plaintiff objected to the allotment

of land on the ground that the land in question was already allotted to him and the same cannot be allotted to the defendant No.2. The plaintiff subsequently amended the suit to the effect that in case defendant No.2 was found in possession of 3 decimal of the suit land in that case the possession of the land should also be given to him after demolition of the illegally constructed house. The plaintiff also averred that a legal notice dated 09/09/93 was also sent to the defendant No.1 as per the provisions of Section 80 of CPC.

3. The defendant No.1 denied the plaint allegations and stated that no lease has been granted in favour of the plaintiff nor any construction has been raised by him over it. On the contrary, the defendant No.2 after constructing a house in the year 1990 is running the business of motor repairing. The eviction proceedings were initiated against defendant No.2 and subsequently the defendant No.2 applied for settlement. The defendant No.1 denied that the legal notice was ever sent by the plaintiff and submitted that the suit was not maintainable for want of statutory notice as envisaged under Section 80 of the CPC. The defendant No.2 also denied the plaint allegations in the identical term as by defendant No.1.

4. After framing of issues the plaintiff examined himself and his brother in law, Rikhab Chand Jain in support of his case whereas defendant No.1 examined Shri N.G. Chakole, the Clerk of the Tahsil Office, Dondilohara and defendant No.2 examined himself and the witness Chandresh Sahu, the Tahsildar, Tehsil Office Dondilohara.

5. The learned trial Judge dismissed the suit of the plaintiff by holding that the plaintiff did not obtain permanent lease of the suit land and further that the defendant No.2 did not apply for allotment of 3 decimal of suit land from the land allotted to

the plaintiff and accordingly it was held that the plaintiff was not entitled for perpetual injunction and the suit was dismissed with cost. It was also held by the trial Court that the plaintiff did not send legal notice under Section 80 of the CPC. The trial Court also recorded a finding that document of Ex.P.1 is simply an intimation of the order and not the grant of lease itself. The trial Court also recorded a finding that there was some interpolation in the document of Ex. P.1 as from the word (अस्थायी), letter (अ), has been erased which is evident from the document of Ex.D.1 being the register of revenue case for the year 85-86 which shows that the plaintiff was given temporary lease for three years. Similarly the document of Ex.D.3 being the original intimation of the order dated 05/05/1987 contains (अस्थायी पट्टा), which also describes the allotment on 'temporary lease'. Similarly document of EX.D.5 and 6 being the proceedings of the Gram Panchayat also mention the 'temporary release'.

6. Thus, the trial Court arrived at the conclusion that the document of Ex.P.1 is the intimation of acceptance of temporary lease. The trial Court also recorded a finding that the plaintiff has failed to prove that he has deposited Rs. 6000/- towards the premium of lease and the documents of Ex.P.9 to P.11 filed by the plaintiff do not show that the aforesaid amount was deposited by him towards the premium. The trial Court also recorded a finding that the plaintiff has failed to prove that he was in possession of the suit land. The trial Court further recorded a finding that the land in possession of defendant No.2 is a different land to the suit land which is evident from the documents of Ex.P-1 to P-3 filed by the plaintiff and by these documents it is established that the land encroached by the defendant No.2 is a different land to the suit land and regarding which intimation of temporary lease was also given to the plaintiff

and accordingly, it has been held by the trial Court that the plaintiff was not entitled for decree of perpetual injunction. Learned trial Court also recorded a finding that no notice under Section 80 of the CPC was given by the plaintiff to the defendant No.1 and as such the suit was dismissed. The appeal preferred by the plaintiff was also dismissed by the first Appellate Court recording the identical finding.

7. Learned counsel for the appellant submits that the findings of both the Courts below are perverse as the plaintiff has established by way of documentary evidence of Ex. P -1 and the documents of Ex. P – 9 to P -11 being the receipts towards deposit of the premium, that land was leased out to him.

8. It is also argued by the counsel for the appellant that the finding of both the Courts below that the suit was liable for dismissal for want of notice under Section 80 of the CPC is also misconceived as notice Ex. P -7 was sent through the registered A.D. on behalf of the plaintiff and therefore in the instant appeal the substantial question of law involved is "whether a notice of Ex. P -7 is a legal notice under Section 80 of the CPC are not and whether findings of both the Courts below regarding the situation of the suit land is based on misconception and therefore illegal, and whether the findings of both the Courts below are based on misreading of the evidence and as such perverse".

9. Form perusal of the material available on record, the pleadings of the parties and the documents filed by the respective parties both the Courts below have arrived at the conclusion that plaintiff has failed to prove that the land in question was given to the plaintiff on a permanent lease. This finding is based on the further finding that the plaintiff has deliberately made some interpolation in the document of

Ex. P -1 being the intimation of grant of temporary lease and he has deliberately erased letter (अ) from the word (अस्थायी) and thereby tried to make the lease permanent. The Courts below have recorded the concurrent finding of fact that the land in question was never leased out to the plaintiff and that he was not in possession of the suit land and further that the land which was encroached upon by defendant No. 2 is a different land to the land claimed by the plaintiff and on the basis of the aforesaid concurrent findings of fact the suit of the plaintiff has been dismissed. There is nothing on record to establish the contention of the plaintiff that the above findings of both the Courts below are based on misreading of evidence and as such perverse, which requires interference by this Court at this stage.

10. In view of the aforesaid discussion this court is of the view that the judgement and decree passed by both the Courts below are based on concurrent findings of fact and they do not require interference by this Court at this stage. Moreover no substantial question of law is involved for adjudication of this appeal and as such the appeal is held to be devoid of substance and dismissed as such.

11. There shall be no order as to costs.

12. Consequently, M.C.P. No. 591/2005 and I.A. No. 1034/2005 stand disposed of.

Sd/-
Dhirendra Mishra
Judge

Jyo